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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,101	09/16/2003	Deborah O'Neil	ONEIL-0002US	1635

7590 09/09/2004
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EXAMINER

OGDEN JR, NECHOLUS

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/663,101

Applicant(s)

O'NEIL, DEBORAH

Examiner

Necholus Ogden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jampani et al (6,248,343) in view of Grollier et al (4,459,285).

Jampani et al disclose a therapeutic antimicrobial composition comprising (0.1 to 10% by weight of Hydrastis Canadensis (col. 2, line 54 and claim 5); essential oils such as Australian Tea oil in an amount from 1.0 to 5.0% (col. 8, line 4); and surfactants such as anionic, nonionic and cationic (col. 8, lines 26-34). See example 9 and claims.

Jampani et al teach all of the instantly required except applicant's specific anionic soap component.

Grollier et al teach a cosmetic composition for skin and hair comprising flowers or flower tops such as buttercup from the Ranunculus family (col. 3, line 24); essential oils

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(col. 4, lines 24-28); and surfactants such as anionic surfactant including soap (col. 4, lines 45-50).

It would have been obvious to one of ordinary skill in the art to include the specific anionic soap of Grollier et al to the compositions of Jampani et al because Jampani et al invite the inclusion of anionic surfactants and Grollier et al teach that soaps are anionic surfactants used in skin treatment compositions. Accordingly, one of ordinary skill in the art, in the absence a showing to the contrary, would have been motivated to include the soap because only synergistic results would have been obtained.

4. Claims 1-5 and 7-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jampani et al (6,248,3443).

Jampani et al disclose a therapeutic antimicrobial composition comprising (0.1 to 10% by weight of Hydrastis Canadensis (col. 2, line 54 and claim 5); essential oils such as Australian Tea oil in an amount from 1.0 to 5.0% (col. 8, line 4); and surfactants such as anionic, nonionic and cationic (col. 8, lines 26-34). See example 9 and claims.

Jampani et al lack an example that specifically teaches each of the claimed components.

It would have been obvious to one of ordinary skill in the art to combine the teaching of Jampani et al to exemplify and specifically teach each of the claimed components because each of the components are taught and required in a single composition.

5. Claims 1-3, 6, 9-10, 13, 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grollier et al (4,459,285).

Grollier et al teach a cosmetic composition for skin and hair comprising flowers or flower tops such as buttercup from the Ranunculus family (col. 3, line 24); essential oils (col. 4, lines 24-28); and surfactants such as anionic surfactant including soap (col. 4, lines 45-50).

Grollier et al lack an example that specifically teaches each of the claimed components.

It would have been obvious to one of ordinary skill in the art to combine the teaching of Grollier et al to exemplify and specifically teach each of the claimed components because each of the components are taught and required in a single composition.

6. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Iyer et al (5,939,050).

Iyer et al disclose an antimicrobial composition that may be in the form of a wipe (col. 7, lines 16-20) comprising an antimicrobial agent comprising an extract from Hydrastis Canadensis (col. 4, lines 1-2); surfactants (col. 7, lines 47-49); and essential oils (col. 5, lines 55-63).

Iyer et al lack an example that specifically teaches each of the claimed components.

It would have been obvious to one of ordinary skill in the art to combine the teaching of Iyer et al to exemplify and specifically teach each of the claimed

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components because each of the components are taught and required in a single composition.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T and Th-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Necholus Ogden
Primary Examiner
Art Unit 1751

No
9-4-04